

### REMARKS/ARGUMENTS

Applicants respectfully submit that Claims 1, 5-9, 12, 13, 15 and 18-21 are pending in this Application and request that the Examiner cancel Claim 14. In the Office Action mailed on January 5, 2005, the Examiner, *inter alia*:

- 1) rejected Claims 1, 5, 6, 9, 12-15 and 19-21 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 5,842,652 to *Warsing et al.* (the “Warsing reference”) in view of U.S. Patent No. 5,001,977 to *Tracy* (the “Tracy reference”);
- 2) rejected Claim 7 under 35 U.S.C. § 103(a) as allegedly unpatentable over the Warsing and Tracy references in view of U.S. Patent No. 5,111,927 to *Schulze, Jr.* (the “Schulze reference”);
- 3) rejected Claim 8 under 35 U.S.C. § 103(a) as allegedly unpatentable over the Warsing and Tracy references in further view of U.S. Patent No. 5,425,458 to *Gilcreest et al.* (the “Gilcreest reference”);
- 4) rejected Claim 18 under 35 U.S.C. § 103(a) as allegedly unpatentable over the Warsing and Tracy references in further view of U.S. Patent No. 5,078,567 to *Lombardo* (the “Lombardo reference”);
- 5) rejected the Claims 1, 5-9, 12-15 and 18-21 based on alleged obviousness-type double patenting in view of Applicants’ prior U.S. Patent No. 6,626,093; and
- 6) asserted that Applicants’ affidavit under 37 C.F.R. § 1.132 is deficient, citing several alleged informalities.

Applicants respectfully address each of these items below.

**Rejection under 35 U. S. C. § 103(a) as allegedly being unpatentable over the Warsing reference in view of the Tracy reference:**

In the Office Action, the Examiner rejected Claims 1, 5, 6, 9, 12-15 and 19-21 under § 103(a) as allegedly being unpatentable over the Warsing reference in view of the Tracy reference citing substantially the same reasons set forth in the last Office Action.

Applicants respectfully disagree.

Claim 1:

Applicants submit that the Warsing reference, either alone or taken in combination with the Tracy reference, does not disclose or make obvious all limitations recited in amended Claim 1. For example, the Warsing reference, either alone or taken in combination with the Tracy reference, fails to disclose a recycling center comprising *a portable container having a storage area configured to store recyclable material, a work area configured to accommodate an attendant and a door configured to separate the work area from the storage area*, as required by Applicants' amended Claim 1.

Accordingly, the Warsing and Tracy references fail to render the Applicants' invention obvious. There is also no suggestion or motivation in the Warsing and Tracy references to prompt one of ordinary skill to selectively combine and add elements as required by Applicants' amended Claim 1. Accordingly, Applicants respectfully submit that Claim 1 is patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claim 1.

Claims 5 and 6:

Claims 5 and 6 depend from allowable Claim 1 and thus are also allowable for the reasons set forth above. Accordingly, Applicants respectfully submit that Claims 5 and 6 are patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claims 5 and 6.

Claim 9:

Applicants submit that the Warsing reference, either alone or taken in combination with the Tracy reference, does not disclose or make obvious all the limitations recited in amended Claim 9. For example, the Warsing reference, either alone or taken in combination with the Tracy reference,

fails to disclose a method for collecting recyclable materials comprising the steps of placing a portable container at a location, *the portable container having a storage area configured to store recyclable material, a work area configured to accommodate an attendant, a door configured to separate the work area from the storage area, a compactor configured to decrease the volume of the recyclable material and is accessible to the attendant, a holding bin in the storage area configured to store the recyclable material, and a rechargeable battery configured to power the compactor*, as required by Applicants' amended Claim 9.

Accordingly, the Warsing and Tracy references fail to render the Applicants' invention obvious. There is also no suggestion or motivation in the Warsing and Tracy references to prompt one of ordinary skill to selectively combine and add elements as required by Applicants' amended Claim 9. Accordingly, Applicants respectfully submit that Claim 9 is patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claim 9.

Claims 12 and 13:

Claims 12 and 13 depend from allowable Claim 9 and thus are also allowable for the reasons set forth above. Accordingly, Applicants respectfully submit that Claims 12 and 13 are patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claims 12 and 13.

Claim 14:

While Applicants disagree with the Examiner's rejection of Claim 14, Applicants request that the Examiner cancel Claim 14. Accordingly, the rejection of Claim 14 is moot.

Claim 15:

Applicants submit that the Warsing reference, either alone or taken in combination with the Tracy reference, does not disclose or make obvious all the limitations recited in amended Claim 15. For example, the Warsing reference, either alone or taken in combination with the Tracy reference, fails to disclose a recycling collection system comprising *a portable recycling container located at the collection location, the portable recycling container having a door defining a work area and a storage area, wherein further the door allows access between the work area and the storage area*, as required by Applicants' amended Claim 15.

Accordingly, the Warsing and Tracy references fail to render the Applicants' invention obvious. There is also no suggestion or motivation in the Warsing and Tracy references to prompt one of ordinary skill to selectively combine and add elements as required by Applicants' amended Claim 15. Accordingly, Applicants respectfully submit that Claim 15 is patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claim 15.

Claims 19 and 20:

Claims 19 and 20 depend, or ultimately depend, from allowable Claim 15 and thus are also allowable for the reasons set forth above. Accordingly, Applicants respectfully submit that Claims 19 and 20 are patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claims 19 and 20.

Claim 21:

Applicants submit that the Warsing reference, either alone or taken in combination with the Tracy reference, does not disclose or make obvious all the limitations recited in amended Claim 21. For example, the Warsing reference, either alone or taken in combination with the Tracy reference,

fails to disclose a recycling center *comprising a door within the portable container to separate a work area from a storage area*, as required by Applicants' amended Claim 21.

Accordingly, the Warsing and Tracy references fail to render the Applicants' invention obvious. There is also no suggestion or motivation in the Warsing and Tracy references to prompt one of ordinary skill to selectively combine and add elements as required by Applicants' amended Claim 21. Accordingly, Applicants respectfully submit that Claim 21 is patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claim 21.

**Rejection under 35 U. S. C. § 103(a) as allegedly being unpatentable over the Warsing and Tracy references in view of the Schulze reference:**

In the Office Action, the Examiner rejected Claim 7 under § 103(a) as allegedly being unpatentable over the Warsing and Tracy references in further view of the Schulze reference citing substantially the same reasons set forth in the previous Office Action.

Applicants respectfully disagree. Claim 7 depends from allowable Claim 1 and thus is also allowable for the reasons set forth above. Moreover, Applicants submit that the Warsing reference, either alone or taken in combination with the Tracy and Schulze references, does not disclose or make obvious all the limitations recited in Claim 7. For example, the Warsing reference, either alone or taken in combination with the Tracy and Schulze references, fails to disclose a recycling center *comprising a portable container having a storage area configured to store recyclable material, a work area configured to accommodate an attendant and a door configured to separate the work area from the storage area*, as required by Applicants' amended Claim 1 and ultimately by Claim 7.

Accordingly, the Warsing, Tracy and Schulze references fail to render the Applicants' invention obvious. There is also no suggestion or motivation in the Warsing and Tracy references to prompt one of ordinary skill to selectively combine and add elements as required by Applicants' Claim 7. In fact, the Schulze reference is an automated recycling machine and thus *teaches away* from the recycling center of Claim 7. Accordingly, Applicants respectfully submit that Claim 7 is patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claim 7.

**Rejection under 35 U. S. C. § 103(a) as allegedly being unpatentable over the Warsing and Tracy references in further view of the Gilcreest reference:**

In the Office Action, the Examiner rejected Claim 8 under § 103(a) as allegedly being unpatentable over the Warsing and Tracy references in further view of the Gilcreest reference citing substantially the same reasons set forth in the last Office Action.

Applicants respectfully disagree. Claim 8 depends from allowable Claim 1 and thus is also allowable for the reasons set forth above. Moreover, Applicants also submit that the Warsing, Tracy and Gilcreest references do not disclose or make obvious all the limitations recited in Claim 8. For example, the Warsing reference, either alone or taken in combination with the Tracy and Gilcreest references, fails to disclose a recycling center comprising *a portable container having a storage area configured to store recyclable material, a work area configured to accommodate an attendant and a door configured to separate the work area from the storage area*, as required by Applicants' amended Claim 1 and ultimately by Claim 8. Moreover, the Warsing, Tracy and Gilcreest references fail to disclose the recycling center of Claim 1, *wherein the work area is configured to shelter the attendant from adverse weather conditions*, as required by Applicants' amended Claim 8.

Accordingly, the Warsing, Tracy and Gilcreest references fail to render the Applicants' invention obvious. There is also no suggestion or motivation in the Warsing, Tracy and Gilcreest references to prompt one of ordinary skill to selectively combine and add elements as required by Applicants' Claim 8. In fact, the Gilcreest reference is an automated recycling machine and thus *teaches away* from the recycling center of Claim 8. Accordingly, Applicants respectfully submit that Claim 8 is patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claim 8.

**Rejection under 35 U. S. C. § 103(a) as allegedly being unpatentable over the Warsing and Tracy references in further view of the Lombardo reference:**

In the Office Action, the Examiner rejected Claim 18 under § 103(a) as allegedly being unpatentable over the Warsing and Tracy references in further view of the Lombardo reference citing substantially the same reasons set forth in the last Office Action.

Applicants respectfully disagree. Claim 18 depends from allowable Claim 15 and thus is also allowable for the reasons set forth above. For example, Applicant's amended Claim 15 and ultimately Claim 18, requires a recycling collection system comprising *a portable recycling container located at the collection location, the portable recycling container having a door defining a work area and a storage area, wherein further the door allows access between the work area and the storage area*. Moreover, Applicants also submit that the Warsing, Tracy and Lombardo references do not disclose or make obvious all the limitations required by Applicants' amended Claim 18.

Accordingly, the Warsing, Tracy and Lombardo references fail to render the Applicants' invention obvious. There is also no suggestion or motivation in the Warsing, Tracy and Lombardo references to prompt one of ordinary skill to selectively combine and add elements as required by

Applicants' amended Claim 18. Applicants thus submit that Claim 18 is patentably distinguishable over the art cited. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claim 18.

**Rejection of the Claims Citing the Judicially Created Doctrine of Double Patenting:**

In the Office Action, the Examiner rejected Claims 1, 5-9, 12-15 and 18-21 under the judicially created doctrine of double patenting over Applicants' prior U.S. Patent No. 6,626,093. Applicants submit herewith a Terminal Disclaimer, together with the requisite fee, disclaiming any part of the term of a patent issuing on the present application which would exceed the term of U.S. Patent No. 6,626,093. Accordingly, Applicants request that this rejection be withdrawn.

**Applicants' Affidavit and Alleged Informalities**

Applicants thank the Examiner for considering the Affidavit of Kevin Tippets under 37 C.F.R. §1.132 (the "Tippets Affidavit"). The Examiner alleges that the Tippets Affidavit has been reviewed but is not deemed persuasive to establish non-obviousness. Applicants disagree.

Specifically, the Examiner alleges that there is no showing that Mr. Tippets is in anyway qualified to make such an affidavit. Applicants respectfully submit that the Tippets Affidavit states that Kevin Tippets is an employee of the assignee, NexCycle, Inc., and has been working in the recycling industry for more than 14 years. *See Tippets Affidavit*, ¶¶ 1 and 2. The Tippets Affidavit goes on to state that Mr. Tippets has reviewed and is very familiar with the present Application and the commercial embodiment of the transportable recycling center, Microsite, as described and claimed in the Application. *Tippets Affidavit at ¶¶ 3 and 4*. Applicants, therefore, submit that the Tippets Affidavit establishes that Kevin Tippets is qualified to make such an affidavit under 37 C.F.R. §1.132.



The Examiner goes on to allege that it is unclear whether the commercial success alleged was based on the claimed subject matter of the Application. Applicants respectfully submit that the Tippetts Affidavit attributes commercial success to the unique combination of features of the transportable recycling center described and claimed in the Application. Specifically, the Tippetts Affidavit describes the commercial success of Microsite, the commercial embodiment of the transportable recycling center described and claimed in the Application. *See e.g., Tippetts Affidavit at ¶¶ 4, 10 and 12-14.* The Tippetts Affidavit attributes Microsite's commercial success to several claimed elements, including for example, Microsite's integration of: (1) a work area and a storage area in a single unit; (2) a compactor within the center; and (3) a rechargeable battery to power the center. *See Tippetts Affidavit at ¶ 14 and Claims 1, 9, 15 and 21.* Accordingly, the Tippetts Affidavit shows that the commercial success alleged is based on and commensurate in scope with Applicants' invention. The Tippetts Affidavit is thus objective evidence of the non-obviousness of Applicants' claims. Applicants, therefore, respectfully request favorable reconsideration of the Tippetts Affidavit.

**CONCLUSION**

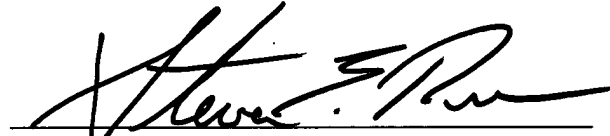
In light of the remarks and arguments presented above, Applicants respectfully submit that the pending and amended claims in the Application are in condition for allowance. Favorable reconsideration and allowance of Claims 1, 5-9, 12, 13 and 15 and 18-21 is therefore respectfully requested.

Applicants hereby authorize the Commissioner to charge any fees, other than the issue fee, that may be required by this paper to Deposit Account 07-0153. If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Dated: 3-7-2005.

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

A handwritten signature in black ink, appearing to read "Steven E. Ross", is written over a horizontal line.

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